

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

HOWARD DENNIS KELLY)

Plaintiff,)

v.)

UNITED STATES MARSHAL)
SERVICE, et al.,)

Defendants)

Civil No. 07-55-P-H

***Decision Recommending Dismissal of Defendants from Civil Rights Action
and
Order Granting Service by the U.S. Marshal on the Remaining Defendant***

Howard Dennis Kelly has filed a complaint against the United States Marshal's Service, the Cumberland County Jail Staff and Medical Department, and the United States Attorney's Office. Kelly's complaint concerns his transportation from a facility in Rochester, New York, a location where he had pending litigation, to Portland, Maine, where he faced federal criminal proceedings. Pending is a motion by Kelly for service by the United States Marshals. I recommend that the Court dismiss the United States Marshal's Service and the United States Attorney's Office because these entities cannot be sued in a Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) action. See F.D.I.C. v. Meyer, 510 U.S. 471, 483-86(1994).

I grant the plaintiff's motion for service by the U.S. Marshal as to the sole remaining defendant, the "Cumberland County Jail Staff and Medical Department." In the event the court does not accept the recommendation dismissing the two federal governmental entities, the plaintiff may renew his motion for service upon those entities.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

April 13, 2007.